IN THE

Supreme Court of the United States

October Term, 1956

No. 520

SIGNAL-STAT CORPORATION,

Petitioner,

v.

LOCAL 475, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE),

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

Questions Presented

Three of the four questions presented by petitioner (Questions Two, Three and Four) are inappropriate for review by writ of certiorari. Questions Two and Three present problems neither raised nor decided below. Question Four presents no issue of general application but merely a difference of opinion between petitioner and the court below over the interpretation of a single contract clause in a particular collective bargaining agreement covering approximately 240 employees.

Respondent believes that petitioner's Question One does not reflect adequately the issues presented by the judgment below. That ruling can be supported both by the Arbitration Act and as an appropriate exercise of judicial discretion under the general decisional law. The following questions are presented:

1. May a court, in the exercise of judicial discretion, stay proceedings in an action for breach of contract until the plaintiff has exhausted the procedures for settlement of the dispute which plaintiff itself agreed to in the contract allegedly breached?

2. Whether an action for breach of a collective bargaining agreement fixing generally the terms and conditions of employment of any production employees plaintiff may hire, may be stayed, pursuant to Section 3 of the United States Arbitration Act, where the employees are engaged in the production of goods for commerce and not engaged in commerce.

Statement of the Case

This case involves a dispute between petitioner and respondent as to whether or not an alleged stoppage of production for a two-day period—October 18-20, 1955—was a lockout of the employees by petitioner in breach of its contract or a strike of those employees for which respondent, the employees' collective bargaining representative, was responsible under the contract.

The collective bargaining agreement then in effect between the employer and the union provided for the settlement by arbitration of "all disputes, grievances, or differences" between the parties.[1] It provided generally for the

[1] The grievance-arbitration clause, Section 18, is set forth in full at page 20 of the petition (App. B).

terms and conditions of employment of the employer's production employees but did not specify whom the employer should hire and bound no one to serve the employer (Ex.). Petitioner concedes that the employees involved were not engaged in interstate commerce but merely in the production of goods for commerce (Pet., p. 3).

On October 24, 1955, the employer filed a complaint in the United States District Court for the Eastern District of New York, claiming jurisdiction under Section 301 of the Labor Management Relations Act (28 U. S. C. 185) and alleging that the union was responsible for a work stoppage in breach of contract. On October 27, 1955, the union submitted a grievance under the grievance-arbitration clause, claiming that the events of October 18-20 constituted a lockout by the employer. The employer in turn submitted its contention that those events constituted a strike to the grievance-arbitration procedure.

On November 14, 1955, before answer, the union filed a motion to stay the action pending arbitration. The employer thereupon withdrew from the grievance proceedings and refused to proceed to arbitration to settle the dispute between the parties as to the events of October 18-20, 1955.

The District Court denied the motion for a stay (Pet. App. B, pp. 15-17). Upon appeal, the Court of Appeals for the Second Circuit reversed the lower court (Pet. App. B, pp. 18-28). The Court of Appeals held that the employer's claim and the union's denial of a breach of contract were referable to arbitration under the "broadly inclusive language" of the arbitration agreement. It held further that the remedy of a stay under Section 3 of the United States Arbitration Act was an appropriate one since the contract was not within the exclusions provided by Section 1 of the Act, which excludes contracts of employment of

employees "engaged in" interstate commerce from the coverage of the Act. The Court of Appeals ruled:

> "The plaintiff's employees are not 'engaged in • • • commerce,' that is, they are not actually engaged in interstate and foreign commerce. They are merely engaged in the manufacture of goods for interstate commerce. Therefore, the collective bargaining agreement here does not come within the exclusionary clause of Section 1."

Petitioner requested rehearing which was denied without opinion.[2]

At no time did petitioner raise before the Court of Appeals the contentions it now makes in support of its Questions Two and Three, that the union was in default or had waived its right to arbitration, or that the remedy afforded by Section 301 of the Labor Management Relations Act was inconsistent with the arbitration process.

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[2] In its petition for rehearing in the Court of Appeals, petitioner requested rehearing by a court *en banc*, asserting a "manifest conflict" of opinion between two divisions of the Court (Pet. for Rehearing, p. 14 *ff.*). This alleged conflict lay in a supposed difference between the instant decision holding the dispute referable to arbitration under the arbitration provisions of the contract and the decision in *Markel Electric Products, Inc.* v. *United Electrical, etc.* (CA 2), 202 F. 2d 435, holding that a dispute involving a breach of that contract was not referable to arbitration under the different contractual provisions there involved.

REASONS FOR OPPOSING THE GRANTING OF THE WRIT

I. The ruling below is supported by the general decisional law as an appropriate exercise of judicial discretion. It raises neither an important question nor one involving any conflict of decisions.

Both Federal and State courts have long held it to be a proper exercise of their judicial discretion not to consider issues arising under a contract until the parties have exhausted the contract procedures for settling disputes between them. *Transcontinental & Western Air, Inc.* v. *Koppal,* 345 U. S. 653; *United Protective Workers* v. *Ford Motor Co.* (CA 6, 1952), 194 F. 2d 997, 1001; *Harrison* v. *Pullman Co.* (CA 8, 1934), 68 F. 2d 826; *Post Publishing Co.* v. *Cort,* 1956 Mass. Advance Sheets 41, 134 N. E. 2d 431. In the *Post Publishing Co.* case the Supreme Judicial Court explained the logic of these decisions.

> "We see no occasion to interrupt the normal course of the arbitration procedure voluntarily adopted by the parties themselves. In so doing we venture no statement as to the validity of any award * * *[cases cited]. * * * Parties may raise before an arbitrator a challenge to his jurisdiction, and, without waiving that question may proceed to a hearing on the merits. The arbitrator should decide the jurisdictional question in the first instance, while the right to a judicial determination will be preserved * * * [cases cited]. * * * We see no irreparable injury in first, as promised, carrying out arbitration before the initial tribunal contemplated in the agreement." 134 N. E. 2d, at p. 434.

The policy expressed in these decisions reflects a general policy favoring arbitration as a means of settling disputes, a policy governing Federal Courts since at least 1925 and

the passage of the Arbitration Act. Moreover, this policy is doubly compelling in the instant case since it involves a dispute over the application and interpretation of a labor agreement and the suit is brought under the Labor Management Relations Act. That Act itself affirmatively recognizes arbitration as a desirable means of settling labor disputes. Section 203(d) of the Act (29 U. S. C. 173(d)) declares that:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application and interpretation of an existing collective bargaining agreement."

See also Section 201 of the Act (29 U. S. C. 171).

The ruling of the Court below is thus clearly supportable as a proper exercise of judicial discretion squarely in line with the national policy toward arbitration, particularly in the area of labor disputes. Since the exercise of this power presents no conflict of decisions between the Courts of Appeals, no question appropriate for review by writ of certiorari is presented by the ruling below.[3] Unlike *UE Local 205* v. *General Electric Co.* (CA 1, 1956), 233 F. 2d 85, cert. granted 352 U. S. 822, and *Lincoln Mills of Alabama* v. *Textile Workers Union of America* (CA 5, 1956), 230 F. 2d 81, cert. granted 352 U. S. 821, where the availability of affirmative relief compelling arbitration as a substitute for litigation is in question, affirmance of the ruling below does not necessarily involve consideration of the reach of either the Arbitration Act or Section 301 of the Labor Management Relations Act.

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[3] The decision below is also in line with applicable New York law which favors arbitration of disputes over breach of contract. *Utility Laundry Service* v. *Sklar*, 300 N. Y. 255; *General Footwear Corp.* v. *Lawrence Leather Co.*, 252 N. Y. 577; *Marchant* v. *Mead-Morrison Co.*, 252 N. Y. 284.

II. The decision below correctly applied Section 3 of the Arbitration Act.

Section 3 of the Arbitration Act is applicable to the instant proceeding. The contract here comes within neither of the exceptions set forth in Section 1 of the Act. It is neither a "contract of employment" nor does it cover workers "engaged in" interstate commerce.

The petitioner concedes that the employees here involved are merely engaged in the manufacture of goods, which had not yet entered the channels of commerce. The employees are thus not included within the Congressional exception which is limited to employees actually engaged in those channels.

The conflicts over the meaning and reach of the Commerce Clause are too recent in our historical past to permit the assumption that Congress, when it passed the Arbitration Act in 1925, did not use the phrase "engaged in commerce" as a term of art. The language used by Congress was taken directly from the federal Employers' Liability Act, 45 U. S. C. Ch. 2, etc., and had already received authoritative interpretation by this Court when the Act was passed. As put in *Shanks* v. *D. L. & W. Railroad Co.*, 239 U. S. 556 (1915), the decisive question imported by that phrase is:

> "Was the employee • • • engaged in interstate transportation or in work so closely related to it as to be practically a part of it?" (239 U. S., at p. 558).[4]

This Court has recognized that Congress uses great care and precision in its choice of formulations where

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[4] *Chicago & Northwestern Ry. Co.* v. *Bolle*, 284 U. S. 74 (1931); *Chicago & Eastern Illinois Railroad Co.* v. *Ind. Commr. of Ill.*, 284 U. S. 296 (1932); *N. Y., N. H. & Hartford R. Co.* v. *Bezue*, 284 U. S. 415 (1932), cases arising under the Employers' Liability Act and decided after the passage of the Arbitration Act, show a continued treatment of the phrase "engaged in commerce" as a term of art.

"commerce" is involved. In *McLeod* v. *Threlkeld*, 319 U. S. 491 (1937), the Court said:

> "In drafting legislation under the power granted by the Constitution to regulate interstate commerce and to make all laws necessary and proper to carry those regulations into effect, Congress is faced continually with the difficulty of defining accurately the precise scope of the proposed bill. In the Fair Labor Standards Act, Congress did not intend that the regulation of hours and wages should extend to the furthest reaches of federal authority. The proposal to have the bill apply to employees 'engaged in commerce in any industry affecting commerce' was rejected in favor of the language, now in the act, 'each of his employees who is engaged in commerce or in the production of goods for commerce'.* Sections 6 and 7. See the discussion and reference to legislative history in *A. B. Kirschenbaum Co.* v. *Walling*, 316 U. S. 517, and *Walling* v. *Jacksonville Paper Co.*, No. 336, October Term, 1942 [317 U. S. 564]. The selection of the smaller group was deliberate and purposeful.
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> "The distinction in the coverage arising from this choice of language was well known to Congress. Cf. National Labor Relations Act, 29 U. S. C. A. § 152. National Labor Relations Bd. v. Jones & L. Steel Corp., 301 U. S. 1; Bituminous Coal Act of [April 26] 1937, 15 U. S. C. A., § 834; Agricultural Adjustment Act [June 3, 1937], 7 U. S. C. A., § 601; Public Utility Holding Company Act of [August 26] 1935, 15 U. S. C. A., § 79a(c)." [Footnote in original.]

The Court below was obviously correct when it refused to read into the Congressional language any more than Congress itself had put there.

Petitioner's argument appears to be that since the border between those "engaged * * * in commerce" and those whose

employment merely affects commerce is not capable of exact *a priori* definition, the distinction is meaningless and should be ignored. The short answer to this is that whether or not petitioner agrees with the wisdom of this distinction, Congress has chosen to make it. The Courts have shown themselves capable of grasping concepts whose shadings are far more subtle.

Collective bargaining agreements are not "contracts of employment" and for that reason also the contract here involved does not come within the limited exception which Section 1 makes to a general Congressional policy favoring arbitration.[5] This Court pointed out in *J. I. Case Co.* v. *NLRB*, 321 U. S. 332, at 334-335, that a collective bargaining agreement differs substantially from a contract of employment. "(N)o one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone. The negotations between union and management result in what has often been called a trade agreement rather than in a contract of employment." See also, *Ill. Central Railroad Co.* v. *Moore* (CA 5, 1940), 112 F. 2d 959, 964, rev'd on other grounds 312 U. S. 630. Indeed, at the time of the passage of the Arbitration Act, a collective bargaining agreement was scarcely recognized as a contract at all, much less a contract of employment. *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corporation*, 348 U. S. 437, at p. 455.

The passage of the Arbitration Act signalled a general Congressional policy favoring arbitration. The exception which the Act makes is therefore to be read narrowly and in the light of general Congressional policy. The Report of the Committee on Commerce, Trade and Commercial Law of the American Bar Association (sponsor of the Arbitra-

[5] The court below leaned toward viewing labor agreements as contracts of employment. Its decision on the commerce question made final decision of this question unnecessary.

tion Act at all its stages), 47 ABA Rep. (1923) 287, describes the reason for the exclusion of Section 1 as follows:

> "Objections to the bill were urged by Mr. Andrew Fureseth as representing the Seamen's Union, Mr. Fureseth taking the position that seamen's wages came within admiralty jurisdiction and should not be subject to an agreement to arbitrate. In order to eliminate this opposition, the Committee consented to an amendment of Section 1 as follows: [Section 1 as enacted set forth.]"

Plainly, Mr. Fureseth was not concerned with collective bargaining agreements, where a union would have sufficient strength to insure fairness in the arbitration process. He, and Congress, were concerned with the individual worker who might not only lose the protection of the Admiralty Courts but might be forced into a "yellow dog" contract where any dispute with an employer would be arbitrated before an arbitrator preselected by the employer under an arbitration agreement signed as a condition of hiring. It was the individual employee's contract of employment and not a collective bargaining agreement which the Act exempted from arbitration.

III. The Court below correctly held the dispute referable to arbitration under the contract. The ruling presents no question appropriate for review by writ of certiorari.

The lower court properly ruled that, under a contract which provided for arbitration of "all disputes, grievances, or differences, * * * between the parties to this agreement", the mutual accusations and denials of breach of contract made by the opposing parties here were referable to arbitration. It is difficult to imagine more sweeping contract language, better calculated to require arbitration. Indeed,

as the court below pointed out in its opinion (App. B, p. 23) "The plaintiff itself apparently construed the grievance-arbitration provisions to include this dispute, since it instituted a grievance pursuant to the provisions of Paragraph 18 of the agreement with respect to 'the matter of the quitting of employment by members of the union with the knowledge, consent and direction of the union.'"

Even had the lower court erred in ruling as it did, no issue suitable for review by writ of certiorari would have been created. Mere error in the interpretation of a single contract clause involving only some 240 employees and their employer does not support the issuance of the writ. And the asserted conflict with decisions of other Courts of Appeals is non-existent. Each of the contracts involved in the cases cited by petitioner had its own special language and history. Each case, therefore, insofar as it interprets specific contract language, is undisturbed by the ruling below.

Petitioner argues primarily that there is a conflict in decisions within the Court of Appeals for the Second Circuit itself between the instant case and *Markel Electric Products, Inc.* v. *United Electrical, etc.* (CA 2, 1953), 202 F. 2d 435. This is not correct. The *Markel* arbitration clause, whether read separately or—as the Court of Appeals read it—in the light of the whole contract, differed significantly from the contract clause here, just as all the contracts in the Court of Appeals cases which petitioner cites differed, one from another. The Court of Appeals which decided both the *Signal-Stat* and *Markel* cases did not find difficulty in reconciling its opinions, since it rejected petitioner's request, based upon an alleged conflict of opinion between two divisions of the lower court, for a rehearing *en banc* (Pet. for Rehearing, pp. 14-18).

In any event, a conflict within a Court of Appeals does not ordinarily support the issuance of a writ.

IV. The questions not raised below.

Questions Number Two and Three as presented by the petition were neither raised in the Court of Appeals nor decided by that court. Clearly, then, the decision below cannot stand for any proposition with regard to these questions. In equal measure, the decision provides no ground for the issuance of a writ of certiorari with respect to these questions. Moreover, the questions presented are without merit.

A. There was no union default or waiver of arbitration.

It is hornbook law that waiver is the intentional relinquishment of a known right. The record is completely barren of any showing that the union ever, in any way, surrendered its right to arbitration under the contract. On the contrary, there was a vigorous assertion by the union of the right to arbitration. The record shows that the union instituted its grievance in the grievance- arbitration procedure within the first week after the events underlying this action. It was the employer which refused arbitration of the union grievance. And when the union expressed a willingness to process the employer grievance under the grievance-arbitration clause, it was the employer which refused to proceed with its grievance.

The union, which has consistently pressed for arbitration, can hardly be called "in default in proceeding to arbitration" when the sole obstacle to arbitration has been petitioner's refusal to arbitrate.

Petitioner's real argument appears to be that since the complaint alleges that the union breached the contract, the union has forfeited its right under the contract to have "all grievances and differences" between the petitioner and the union decided by arbitration. But this contention presupposes a determination that the union has breached the agreement, a claim the union vigorously denies. And the

arbitration agreement gives the union the right to have the initial question of breach *vel non* and the legal consequences of that decision decided by an arbitrator in the first instance.

Petitioner's contention would vitiate the entire arbitration process. Arbitrations generally occur only when a breach of contract is claimed and denied. Its purpose is to decide that issue. Petitioner's contention, if accepted, would permit any party to a contract containing an arbitration clause to avoid its agreement to arbitrate breaches of the contract by a simple claim that those same breaches had occurred. This contention has no merit. *In re Pahlberg Petition* (CA 2, 1942), 131 F. 2d 968; *Shanferoke Coal and Supply Co.* v. *Westchester Service Corp.* (CA 2, 1934), 70 F. 2d 297; *Kulukundis Shipping Co.* v. *Amtorg Trading Corp.* (CA 2, 1942), 126 F. 2d 978; *Hudson Wholesale Grocery Co.* v. *Allied Trades Council,* 3 N. J. Super. 327, 67 A 2d 557.

B. The arbitration process is not inconsistent with Section 301 of the Labor Management Relations Act.

Petitioner appears to contend (p. 10) that in some way rights established by Section 301 will be lost if plaintiffs must first live up to their agreements to arbitrate before seeking judicial relief. It is difficult to conceive of any basis for this contention. Arbitrators have proven themselves perfectly capable of deciding breach of contract issues. Congress recognized this thirty years ago when it passed the Arbitration Act. It is probably due in large measure to the ability of the professional arbitrator to decide contract issues that the present system of industrial government based upon collective bargaining agreements is able to exist in its present stable form.

Only if petitioner's underlying presumption of hostility to the arbitration process be accepted, does its contention that arbitration destroys rights under Section 301 become

meaningful. But the traditional judicial hostility towards arbitration has long been replaced by a favorable attitude. The very Congress which enacted Section 301, in the same breath, declared itself in favor of the arbitration of industrial disputes. No hostility exists between the desire of Congress that labor agreements should be observed and the requirement that arbitration clauses in labor contracts should be respected.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated, December 10, 1956.